

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK
) (Copyright)
)

) **DECLARATION OF DAMIAN D.**
) **CAPOZZOLA IN SUPPORT**
) **DEFENDANT PCT'S RESPONSE**
) **TO PLAINTIFF WAYNE BERRY'S**
) **MOTION IN LIMINE TO EXCLUDE**
) **EVIDENCE OF DEDUCTIBLE**
) **EXPENSES AND BARRING ANY**
) **TESTIMONY FROM THE PCT'S**
) **EXPERTS**

Judge: Hon. Susan O. Mollway
Trial Date: January 24, 2006

Hearing Date: January 20, 2006
Hearing Time: 2:00 pm

I, DAMIAN D. CAPOZZOLA, declare that:

1. I am an attorney at the law firm of KIRKLAND & ELLIS, LLP, attorneys for Defendant PCT and am duly authorized to make this affidavit.

2. I am licensed to practice law in the State of California and have been admitted pro hac vice in this case. I know the following to be true through my work in this case, and if requested could and would competently testify as such.

3. Exhibit A contains true and correct excerpts from the June 16, 2005 report of Jeffrey H. Kinrich.

4. Exhibit B contains a true and correct copy of Fleming's proposed trial exhibit # 231, a demonstrative aid for the testimony of Jeffrey Kinrich.

5. Exhibit C contains a true and correct copy of correspondence between counsel concerning production of materials to Thomas Ueno.

6. Exhibit D contains a true and correct copy of excerpts from Fleming's August 24, 2005 summary judgment filing in which Fleming submitted evidence of what materials had been provided to Berry's expert.

7. Exhibit E contains true and correct excerpts from reports from Martin G. Walker submitted in connection with this matter, showing materials Mr. Walker relied on.

8. Exhibit F contains true and correct excerpts of correspondence between counsel in this matter showing that materials Mr. Walker relied on were conveyed to Berry's counsel if they were not already among the materials available to all counsel.

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9. Exhibit G contains a true and correct copy of the September 28, 2005 supplemental report submitted by Jeff Kinrich in this matter.

So sworn under penalty of perjury under the laws of the United States of America in Los Angeles, California, on January 10, 2006.

A handwritten signature in black ink, appearing to read "Damian D. Capozzola", written over a horizontal line.

Damian D. Capozzola